RECEIVED

DOCKET FILE COPY ORIGINAL

JUN 2 1 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 **Rate Regulation**	MM Docket 92-266

PETITION FOR RECONSIDERATION

OF THE

CALIFORNIA CABLE TELEVISION ASSOCIATION

Spencer R. Kaitz
President
Jerry Yanowitz
Vice President, Federal Affairs
Jeffrey Sinsheimer
Director of Regulatory Affairs
California Cable Television Association
4341 Piedmont Avenue
Oakland, California 94611
(510) 428-2225

Frank W. Lloyd
[illegible]

SUMMARY

The California Cable Television Association ("CCTA") requests the FCC to clarify on reconsideration that the substantial local utility user taxes and possessory interest taxes faced by cable television operators in California may be treated:

(1) As external costs for purposes of future rate increases;

(2) As external to the initial rate benchmarks set by the FCC; and

(3) As properly itemized on cable subscriber bills.

CCTA notes that the 1992 Cable Act required the FCC to take into account certain types of taxes imposed on cable operators and subscribers in setting basic service rates. The proper manner in which the FCC should take these taxes into account is to provide them with external treatment both initially and in rate increases above inflation.

The FCC's staff has recently stated that it does not wish to encourage operators to seek cost of service showings but rather has asked for suggestions on reconsideration on how the initial benchmarks could be better adapted to more operators' needs so that fewer cost of service showings would be necessary. Because

of the manner in which the FCC's rate survey was conducted, some taxes, including California cable operators' possessory interest taxes and utility user taxes, were not included in the rates used for benchmark computation. Utility user taxes are itemized on customer bills, and many California operators assessed a possessory interest tax are currently itemizing this tax on customer bills. As a result, when these operators reported their rates to the FCC these costs were not included in the survey, and thus were not included in the resulting benchmark rates.

Even had these rate been included, the national benchmark rates would have been inconsequentially impacted, while the impact of these taxes would have remained extremely high on individual California operators. The FCC should allow these easily identifiable costs to be added to the benchmark rates.

CCTA believes that the 1992 Act and the FCC's rules implementing it clearly permit a cable operator to itemize utility user taxes as a tax "on the transaction between the operator and the subscriber." The FCC should, if necessary, redefine its rules to carry out the intent of the 1992 Act that taxes such as possessory interest taxes, which are in effect and an essence a tax on the transaction between operator and subscriber, should also be allowed to be identified on subscriber bills.

TABLE OF CONTENTS

RECEIVED

JUN 2 1 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 Rate Regulation	)	MM Docket 92-266

PETITION FOR RECONSIDERATION

OF THE

CALIFORNIA CABLE TELEVISION ASSOCIATION

Introduction

The California Cable Television Association ("CCTA") represents cable television operators who serve nearly six million customers. CCTA's Petition for Reconsideration focuses on state and local taxation issues with which its members have unique experience: (1) the proper treatment of cable utility user taxes and possessory interest taxes on cable television franchise rights, as external to the price cap on rates going forward, (2) the proper treatment of these taxes as also external to the initially computed rates based on FCC survey-derived benchmarks, and (3) the ability to itemize these taxes on subscriber bills.

1. **The FCC Should Clarify That All Increases In The Substantial Local Utility User Taxes And Possessory Interest Taxes Faced By Cable Television Operators In California May Be Treated As External Costs For Purposes Of Future Rate Increases.**

In its Report and Order in this docket the Commission recognized that the 1992 Cable Act required that, in setting basic service rates, the Commission must take into account the reasonable and properly allocable portion of "(1) taxes and fees imposed by any state or local authority on transactions between cable operators and subscribers; (2) assessments of general applicability imposed by a governmental entity against cable operators or cable subscribers."[1/]

The Commission states that it will meet this statutory requirement "by providing that certain costs unique to cable operations may be treated as costs external to the cap"[2/] in allowing rate increases. These costs include any increases in "taxes imposed on the provision of cable television service"[3/]

1/ Report and Order, ¶254, pp. 159-60. The Commission was referring to new Section 623(b)(2)(C)(v) of the Communications Act, added by the 1992 Act, which states that the FCC, in prescribing basic service tier regulations, shall take into account, among other factors:

> "(v) the reasonably and properly allocable portion of any amount assessed as a franchise fee, tax, or charge of any kind imposed by any State or local authority on the transactions between cable operators and cable subscribers or any other fee, tax, or assessment of general applicability imposed by a governmental entity applied against cable operators or cable subscribers."

2/ Report and Order, ¶254, p. 160.

3/ Id.

and franchise fees, to the extent they exceed inflation. The actual text of the FCC's new rules defining allowable external costs above the annual price cap describes these as "state and local taxes applicable to provision of cable television service."[4/] The Commission states that "these costs are largely beyond the control of the cable operator, and should be passed on to subscribers without a cost-of-service showing."[5/]

CCTA urges the Commission to clarify that the types of taxes that fit within the FCC's definition of taxes "imposed on" or "applicable to" the "provision of cable television service," include taxes such as utility user taxes and possessory interest taxes on cable television franchise rights. In doing so the FCC will insure fairness and will avoid forcing a significant number of California cable television operators faced with dramatic increases in such taxes to opt for cost-of-service regulation.

CCTA assumes that the FCC, by using the broader phrases "imposed on" and "applicable to" the "provision of cable television service" meant to subsume within the category of allowable external costs both types of taxes referenced by the 1992 Act --- both those imposed on "transactions between cable operators and cable subscribers" and those of general

---

4/ 47 C.F.R. § 76.922(d)(2)(i), in Appendix C to the Report and Order.

5/ Report and Order ¶254, p. 160.

applicability but "applied against cable operators or cable subscribers." The language in this portion of the Act and the FCC's rules is explicitly different from the language in the Act and the FCC rules relating to subscriber bill itemization, discussed below, which covers solely taxes on transactions between operators and subscribers.[6/]

CCTA agrees with the FCC that taxes "imposed on" or "applicable to provision of cable television service" should be passed on to subscribers without a cost of service showing. Government-mandated costs of cable operators in California have skyrocketed since the passage of the 1984 Cable Act.[7/] Taxes are one, if not the largest, source of rate variance between cable television operators in different California franchise areas, as well between California operators and those in other

---

6/ While CCTA notes below that utility user taxes are clearly taxes on the transactions between operators and subscribers, and that possessory interest taxes are also such taxes in essence and effect, this conclusion is not necessary to their proper treatment as external costs under the broader statutory mandate in the rate-setting section of the 1992 Act.

7/ In some California markets, the combination of PEG access costs, franchise fees, utility user taxes and the possessory interest tax on cable television franchise rights and local taxes creates a tax burden on cable operators and subscribers of up to 25 percent of gross revenues each month. Unlike their video competitors, such as over-the-air broadcasters and SMATV, MMDS, LMDS, or DBS operators, only cable television regions of the country.[8/] They are also a matter of public record and, as such, are readily identifiable.[9/]

Local jurisdictions may impose utility user taxes on customers of California utilities, as well as on cable television subscribers as a percentage of a subscriber's charges on their bill.[10/] These taxes are collected by the cable operator and appear on the subscriber's monthly cable bill. Utility user taxes are applied to cable television customers in almost 50 California franchises. The rates range from a low of three percent to a high of eleven percent. While these taxes are also applied to users of gas, electric, water, and telephone utilities, they are still clearly taxes directly "imposed on" or "applicable to" the "provision of cable television service," since, just like franchise fees, they are based on customer revenues for the receipt of cable services.

The same is true of the California "possessory interest" tax on cable television. Despite the fact that under California law the intangible assets of a cable television operator are not

---

8/ Some attempts to impose similar possessory interest taxes on cable operators have occurred in Iowa and Idaho. But the tax is principally a California phenomenon.

9/ The possessory interest tax on cable television franchise rights comes as a separate bill from other taxes from county assessors.

10/ The Cable Act (as well as California law) makes it clear, however, that cable is not a utility. See 47 U.S.C. §541(c).

subject to property taxes, California county assessors have been levying taxes on cable television operators based upon assessments that include the cable operators' intangible assets, in effect their franchise rights.

In 1986, the California Court of Appeals held that a cable operator's franchise right to use the public rights of way constituted a taxable possessory interest.[11/] The opinion failed to provide guidance on how to value this unique property right.

Despite attempted corrective legislation[12/] and a California court decision that specifically held that a cable company's right to do business is protected by the First Amendment and not subject to property taxation,[13/] many California cable operators are still being assessed based upon the full value of their systems as going concerns. Only recently

---

[11/] Cox Cable of San Diego, Inc. v. County of San Diego, 185 Cal. App. 3d 368, 299 Cal. Rptr. 839 (1986).

[12/] Cal. Rev. & Tax. Code § 107.7(a) (West Supp. 1990). Pursuant to that statute, an assessor may value the possessory interest using any acceptable statutory method. However, "the preferred method of valuation of cable television possessory interest is capitalizing the annual rent [the franchise fee], using an appropriate capitalization rate." Id. at § 107.7(b)(1). This method avoids the taxation of nontaxable intangible assets. Id. at § 107.7(d).

[13/] County of Stanislaus v. Assessment Appeals Board, 213 Cal. App. 3d 1445, 1454, 262 Cal. Rptr. 439 (1989) ("The levying of *ad valorem* taxes on Post-Newsweek's right to do business as a cable operator would be unique to nontutility taxpayers in California.")

the California courts clarified a methodology to assess cable possessory interests.[14] Despite these decisions the assessors continue to insist that they are entitled to tax the going concern value of cable companies. As a result, some cable television operators are being taxed based on the value of their intangible assets, in effect on the income stream from their provision of cable television services, rather than on the basis of their taxable real and tangible personal property.

In 1991, for example, Viacom, one of CCTA's members, faced an astronomical increase in its possessory interest tax valuation, by a multiple of 27 times its prior valuation. This amounted to well over $1.00 per subscriber per month, in addition to similar utility user tax increases that were imposed during that year.[15]

Other media businesses or similarly-situated businesses using public rights of way are not taxed in this manner. Newspapers, radio stations, television stations and motion picture theaters are bought and sold on the basis of cash flow when they change hands, very much like cable television systems. But, unlike cable television systems, the substantial intangible

---

14/ County of Orange v. Orange County, Assessment Appeals Board, 13 Cal. App. 4th 524 (1993), Shubat v. Sutter County Assessment Appeals Board, 13 Cal. App. 4th 794 (1993).

15/ See Exhibit A, "Viacom Slammed With Calif. Tax Increase," Multichannel News, August 19, 1992, p. 1.

assets of these media are not assessed. Thus, this peculiar possessory interest tax on cable television franchise rights is, just like the cable utility user tax, clearly a tax "imposed on" or "applicable to" the "provision of cable television service." They should therefore be treated as within the FCC's existing definition in its rules of allowable external costs that can be taken as rate increases above inflation.

If the Commission does not adopt the approach proposed by CCTA for such tax increases, gross inequities could result. For example, an operator such as Viacom could find itself within the benchmark at a rate the franchising authority and FCC have determined to be reasonable. Then, a county assessor could hit the cable operator with a possessory interest tax that puts the operator outside the benchmark. This could result in an operator not being able to earn a reasonable rate of return and force the operator unnecessarily into a cost of service showing.

2. The FCC Should Also Treat Utility User Taxes and Possessory Interest Taxes on Cable Television Service As External To The Initial Rate Benchmarks.

The Commission allows cable television operators not only to add any franchise fee increases above inflation to the benchmark rate, on a going forward basis, but also to add franchise fees to the computations of their initial rates as an external cost. However, for reasons that are not clearly explained in the Report and Order, the FCC only allows increases above inflation in all other taxes "applicable to the provision of cable television service" to be added to the initially set benchmark-set rate on a going forward basis, and does not treat these costs as external to a cable system's rates as compared with the benchmark during the process of the initial computation of allowable rates in Form 393. CCTA believes that this dichotomy of treatment is not consistent with the directions of Congress, which placed such other taxes in the same category as franchise fees in its directions to the FCC for consideration of such taxes in Section 623(b)(2)(C)(v) of the Act.

The Commission states at paragraph 257 of the Report and Order: "We recognize that the survey data on which our benchmark is based are not adjusted to exclude costs other than franchise fees. Thus our measure of comparison to competitive rates includes most categories of external costs and the resulting permitted rates will also include these costs." This is the FCC's apparent basis for disparate treatment of exogenous governmentally-imposed costs other than franchise fees.

But this statement of the issue misses two critical points.

assessed a possessory interest tax are currently itemizing this tax on their customer bills. In jurisdictions that levy a utility user tax, all operators itemize this tax on their customer bills. As a result, when these cable television operators reported their rates to the Commission these costs were not included because there was not a separate place on the FCC survey form for these other taxes, as there was for franchise fees. If, for example, the rate for cable service was $17 and the itemized possessory interest tax was $2, or the utility user tax was $2, only the $17 was reported to the Commission. Therefore, these local taxes applied to cable television service are not included in the benchmark rates resulting from the FCC's survey.

Even more important, even if all California cable televsion operators who are being assessed these taxes had included the taxes in the rates that they reported to the Commission, the problem would not have been adequately addressed. While these tax figures may be very large to the individual operator, because the number of operators being assessed these taxes on a national level is very small, the impact on the national benchmark rates would have been inconsequential even had they been included. Those California operators who are being assessed this tax would still be facing the problem of having their overall rates fall significantly outside the benchmark rate as a result of taxation costs totally beyond their control, while operators who do not have these costs might have benefitted by the fact that their benchmark rates might have been negligibly higher. It is clear that the overwhelming amount of the California possessory interest taxes on cable television franchise rights and utility user taxes are not currently accounted for in the national benchmark rates. The impact of these taxes on California cable television operators is so disproportionately great that to consider them as included in the benchmark rates is grossly unfair.

The possessory interest tax levied in California on the use of the public right of way by cable companies ranges, per subscriber, from as little as 4 cents per month to over 3 dollars per month. Utility user taxes, as noted above, range from three percent to eleven percent of subscriber charges per month. These ranges are so great as to make using of a single benchmark without allowing for separate treatment of these taxes totally inappropriate for California operators.

To take into account these highly divergent and yet easily identifiable costs, the Commission should allow them to be added on to the benchmark rate, either in a revision to Form 393 or through a clarification that a cable operator can add these taxes to the allowable rate computed through the use of Form 393. Each of them is more logically treated as exogenous and does not fit within the benchmark model. FCC staff have recently stated publicly that the FCC wants to minimize the need for cost of service showings to the extent feasible, and expressed a desire for cable operators to submit proposals on reconsideration to make the benchmark process workable for more cable operators. This simple equitable change proposed by CCTA will allow many more California cable operators to operate under the benchmark system, rather than under the more costly and burdensome, and in this case unnecessary, cost of service regime.

Enclosed is a declaration supporting these points from James Dertouzos, a Senior Economist with RAND who has substantial experience in California cable television tax cases.[16/] He has studied the FCC survey data in detail, and his conclusions as outlined in the attached statement are totally consistent with this analysis.

Without adoption of the approach outlined above, the benchmark system could result in dramatic injustices. Systems in adjacent cities with similar demographic profiles (e.g., size, subscribers, etc.) could well have the same rate set by the FCC's benchmarking process. But, if one city has far more onerous costs imposed by government on its cable television operator or cable subscribers, that operator should not be limited to charge the same benchmark cable rate without adding on such costs. This situation arises in places like Los Angeles County, where the

---

16/ See Exhibit B.

City of Compton places no utility user tax on cable television, but Culver City imposes an 11% tax on cable bills. The same situation arises when one county levies a very onerous tax on a cable system's possessory interest in its franchise and the neighboring county's possessory interest tax is far lower.

3. The FCC Should Permit Cable Operators To Itemize Both Cable Utility User Taxes And Possessory Interest Taxes Within The Statutory Definition of Taxes On The Transaction Between the Operator and the Subscriber.

CCTA believes that Section 622(c)(3) of the 1992 Cable Act and the implementing FCC rules permit a cable operator to itemize utility user taxes.[17/] A utility user tax is clearly a tax "on the transaction between the operator and the subscriber." CCTA also believes that the FCC should permit a cable operator to

---

[17/] Section 622(c) states that:

"(c) Each cable operator may identify, consistent with the regulations prescribed by the Commission pursuant to section 623, as a separate line item on each regular bill of each suscriber, each of the following:

(1) The amount of the total bill assessed as a franchise fee and the identity of the franchising authority to which the fee is paid.

(2) The amount of the total bill assessed to satisfy any requirements imposed on the cable operator by the franchise agreement to support public, educational, or governmental channels or the use of such channels.

(3) The amount of any other fee, tax, assessment, or charge of any kind imposed by any governmental authority on the transaction between the operator and the subscriber."

itemize cable possessory interest taxes under the definition of properly itemized taxes on subscriber bills.

CCTA recognizes that the definition in this section of the Act is somewhat different than the definition of the types of taxes that Congress stated should be considered by the FCC in the rate-setting section of the Act, discussed above. But the rationale behind the itemization section of the Act is fully applicable to cable possessory interest taxes, and such taxes are, in fact and in essence, taxes on the transaction between the operator and the subscriber. The FCC's rules implementing this cable operators' current income comes from subscribers, and the assessors, in practice, have used subscriber income as an analog for total income. The possessory interest tax, therefore, is tied directly to the prices charged by the cable operator to its subscribers. The net effect of the possessory interest tax is very much the same as that of a utility user tax. Both taxes are a direct function of the price charged by the cable operator to subscribers.

The Report and Order contains a footnote stating that the California possessory interest tax is not a "franchise fee" within the definition of Section 622(g) and therefore not subject to itemization under Section 622(c)(1).[19/] CCTA agrees that the cable possessory interest tax in California is not a "franchise fee." But it is, as shown above, in essence and effect a tax on the transaction between the operator and the subscriber, and therefore should be subject to itemization under Section 622(c)(3).

The clear intent of Section 622(c)(3) is to make local government accountable for the exercise of its taxing authority over cable television, to prevent local government from forcing the cable operator to bury these costs in order to escape constituent wrath. Many California operators have been itemizing

---

[19/] Report and Order, fn. 1399.

possessory interest taxes, and will be forced by a contrary interpretation to discontinue this practice.

Senator Lott made clear his intentions when he introduced the amendment that added this section of the Act. He called for an "openness in billing" that would identify "hidden, unidentified" fees or taxes.[20/] In a system of checks and balances where government gets the choice of levying the tax, the operator should have the ability to make these charges clear to its customers, who are the local government's constituents.

Conclusion

For the above reasons, CCTA requests the FCC to clarify that the types of utility user taxes and possessory interest taxes faced by cable operators in California may be (1) treated as external costs for purposes of future rate increases (2) treated

---

20/ January 29, 1992, 138 Cong. Rec. S569 (daily ed. Jan. 29, 1992) (Statement of Senator Lott).

as external to the initial rate benchmarks, and (3) itemized on cable subscriber bills.

Respectfully submitted,

Spencer R. Kaitz /fwl

Spencer R. Kaitz
President
Jerry Yanowitz
Vice President, Federal Affairs
Jeffrey Sinsheimer
Director of Regulatory Affairs
California Cable Television Association
4341 Piedmont Avenue
Oakland, California 94611
(510) 428-2225

Frank W. Lloyd

Frank W. Lloyd
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004
(202) 434-7300

June 21, 1993

D17627.1

Exhibit A

Multichannel News, August 19, 1991, P. 1

Viacom Slammed With Calif. Tax Increase

By RACHEL W. THOMPSON

Viacom Cable's California division probably wishes it could just rip up its cables, pack its satellite receivers into the back of a truck and leave town, given skyrocketing state and local taxes.

Following a 10-county, state-mandated reassessment of all of the MSO's California properties, acquired in June 1987 by National Amusements Inc., Viacom now faces a 570 percent increase in its combined personal property and possessory interest tax valuations for the year 1987.

Year	Valuation	Approx. Tax
1987	$188,029,600	$2,008,000
1988	191,790,192	2,030,000
1989	195,625,995	2,051,000
1990	199,538,515	2,092,000
1991**	203,529,285	2,218,469
Total		$10,399,469***

A Viacom spokeswoman said the

SEE VIACOM, PAGE 41

Viacom Slammed With Calif. Tax Increase

CONTINUED FROM PAGE 1

MSO was fully aware that the new assessments were going to come in higher, but had anticipated an increase of roughly 60 percent.

"To come in at 570 percent was just a mind-blower," she said.

In addition to the impact on Bay Area subscribers, the new taxes may hurt relations with state and federal lawmakers, she predicted.

For possessory interest alone — essentially a rental fee for use of city rights-of-way entirely separate from a franchise fee and largely a California phenomenon — Viacom said the 1987 statewide valuation catapulted by a multiple of 27, from $18.5 million to $506 million.

Possessory interest rates vary from county to county, but the average is 1 percent, according to county assessors and cable attorneys.

Only very rough total estimates of Viacom's liability were available last week, but those interviewed generally put the fee at $5 million for 1987, climbing about 2 percent each year after that.

"To come in at 570 percent was just a mind-blower."
— Viacom spokeswoman

As individual bills began to hit Viacom offices last week, Viacom CFO John Kopchik said it was too early to predict the impact on Viacom's 380,000 subscribers.

It's no secret that a substantial portion will be passed along to them, although Kopchik said Viacom would seek to minimize the impact.

Asked whether he was worried about system growth as a result, Kopchik answered, "Heck, yes, there is a price-value ratio to cable, and it has been very good. ... We haven't determined exactly what we're going to do yet."

Meanwhile, Viacom dispatched its system managers last week to discuss the new taxes with their local officials. A draft letter provided by Viacom headquarters for this purpose warned of "a significant increase in cable rates," possibly this fall or at the time of the next scheduled rate increase.

Legal appeals in each of the 10 counties will also cost a pretty penny and are also likely to be borne in part by subscribers. County assessors and cable attorneys predict the assessments will finally be resolved in court.

"It's like a war room in our attorney's office, keeping the appeals straight," said Kopchik. "This is going to be one drawn-out process."

According to *Multichannel News* calculations based on numbers provided by San Francisco County assistant assessor Stephen Dunbar, Viacom's possessory interest tax bill there for 1991 will exceed $2.2 million. Dunbar estimated that approximately one-third of Viacom's California subscribers reside within the county.

In addition to its current-year liability, the MSO will be responsible this year for a portion of the "escaped taxes" for 1987-90, cable attorneys and county assessors said.

Cable attorneys and assessors agreed that no less than 20 percent of that four-year total must be paid this year, with the balance in payments to be spread over as many as four years.

"Escaped taxes" do not include taxes paid during those years based on the pre-1987 valuations.

Dunbar estimated that in San Francisco, a pass-through could cost subscribers between $1.10 and $1.60 a month. That's on top of a $21.50 basic rate, which, according to San Francisco cable official Joan Lubamersky, rose from $19 for 52 channels in January.

But two communities will get a double whammy, as recently passed utility user fees are also slated to go into effect this fall.

In Tiburon, the local government will begin applying a 7 percent utility user fee in October; in Redding, the fee will be 5 percent, starting in November, according to a Viacom spokeswoman.

No averages are available for 1990 California cable purchases, but using an extremely conservative base of $20, Tiburon and Redding subscribers will see a $1 to $1.40 increase in addition to the possessory interest and personal property tax increases if the full tax is passed through.

Viacom said in its letter to government officials, "We are truly outraged by being forced into this property tax and rate increase, and Viacom pledges to exhaust every possible remedy to overturn this unfair and dubious tax assessment."

Possessory interest taxes statewide, along with aggressive personal property tax valuations in Orange County, are among the issues that get California cable operators hottest these days.

In Orange County, a dispute over whether assessors searching for a new valuation methodology have in the process taxed intangibles exempted by state law has led to nasty political and legal battles.

Cable operators argue that in both instances, county assessors have overstepped their constitutional authority and imposed the equivalent of a second income tax.

"To the extent that the assessor has valued non-taxable, intangible business enterprise value, regardless of the methodology, we're fighting that same issue," said John Gibbs, senior vice president for Continental Cablevision.

"Taxes are the biggest single consumer price problem we have," he said, "and these various increased taxes don't add any value to the (cable) product."

County assessors generally concede that a methodology that all parties can agree on is likely to remain elusive.

"Cable is really in kind of a limbo," said Marin County assessor Jim Dal Bon, who said assessors have for the past few years been trying to come to terms with "a very complex industry."

But, he said, "Their reaction, while it's aggressive, is not unusual among large business concerns. In fact, it pretty much tracks with our experience."

According to Fresno County assessor Bill Greenwood, who was not involved in the Viacom assessment, but who chairs an ad hoc cable committee of the California Assessors Association, "In all frankness, we have not discovered (anything), from either point of view, (that) is overwhelming" during talks with the cable industry.

"The degree to which personal property intangibles may be something called business enterprise ... (all parties) have been wrestling with this matter."

Legislation may ultimately be necessary to resolve the issue, he said.■

Exhibit B

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992	)	**MM Docket 92-266**
	)	
Rate Regulation	)	

DECLARATION OF DR. JAMES DERTOUZOS
IN SUPPORT OF PETITION FOR RECONSIDERATION
OF THE CALIFORNIA CABLE TELEVISION ASSOCIATION

I, Dr. James Dertouzos, declare:

This Declaration has been prepared by me in support of the Petition for Reconsideration of the California Cable Television Association (CCTA). CCTA is seeking a ruling from the Federal Communications Commission (FCC) that possessory interest taxes on cable television franchise rights be passed-through the benchmark rates for cable television service. I am an economist employed by the Rand Corporation and I have studied mass media markets, including cable television, extensively. A copy of my Curriculum Vita is attached hereto.

Most recently, I have been retained by Bay Cablevision, a cable television system operator in the San Francisco Bay Area and member of the CCTA, as an expert witness in litigation over the legality of utility users taxes on cable television, and in litigation over the valuation of cable television possessory interests. In the course of my work in the utility users tax case, I have become intimately familiar with recent surveys of the cable television industry conducted by the FCC and by the National Cable Television Association (NCTA), and I have used the data from those surveys both to test hypotheses relevant to the litigation and to replicate and study the conclusions drawn by the FCC staff in support of their cable television rate regulations. As part of my work on the possessory interest cases, I have studied the methodologies used by County Assessors in California to appraise cable television possessory interests.

Possessory interest taxes on cable television franchise rights, as those taxes have been assessed by California County Assessors, are appropriate for pass-through. Possessory interest taxes imposed by California County Assessors on cable television